



U.S. Department of Justice

Environment and Natural Resources Division

RLL

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February 23, 2013

Robert G. Kuhs
Kuhs & Parker
P. O. Box 2205
1200 Truxtun Avenue, Suite 200
Bakersfield, CA 93303

Re: Notice of Deposition for United States' Witnesses.

Robert –

We have filed a Notice of Objection to your Notice of Deposition of United States' Witnesses this afternoon. Rather than further delaying depositions, however, we propose stipulating to certain limits to the request for documents to be produced for Dr. Oberdorfer and Gerry's depositions this Tuesday. Because time is short please let us know no later than noon Sunday if this proposal is acceptable. Please note that "[t]he effect of making written objections to a deposition notice is twofold. First, the objecting party need not attend the deposition. Indeed, if the objecting party attends the deposition, any objections to the notice are waived. Second, if the trial court sustains the objections, any subsequent deposition cannot be used at trial against the objecting party." *See* Cal. Civ. Prac. Proc. § 13:54 (Citing Code Civ. Proc., § 2025.410).

If we can agree to the following clarifications and limitations to the paragraphs in your Notice we believe the depositions next week will not have to be further postponed:

1. "All DOCUMENTS received, reviewed or relied upon by the DEPONENT in preparing to provide expert testimony in this proceeding."

Response: please clarify that you are referring to the Phase IV trial as the "proceeding" and not the entire length and scope of the adjudication. *See* the Second Amendment to Case Management Order for Phase Four Trial, dated February 15, 2013 ("Scope of Depositions: The depositions will be limited to those matters reasonably related to the scope of the Phase Four trial and the evidence anticipated to be proffered by the party producing the witness in question.")

2. "All preliminary, draft and final DOCUMENTS prepared by or on behalf of the DEPONENT which in any way pertain to the DEPONENT's review, analysis, opinions, conclusions, or beliefs regarding the subject matter of the Phase 4 trial."

Response: Dr. Oberdorfer has produced all documents relative to this request and they are posted on our U.S. Document court web-link. See Case Management Order for Phase IV Trial, dated Dec. 12, 2012 (“7. All deponents are directed to produce their file on this matter, and any other requested materials for inspection at least three business days before the date set for the deposition at the expert's place of business or such location as the parties may agree. Such materials may be produced in electronic format.”)

As you are aware, Gerry Boetsch has been identified as a percipient witness. He has submitted a declaration in lieu of testimony for purposes of providing testimony on the 2000-2004 and 2011-12 use and production of water at EAFB. Nevertheless, we identified Gerry as a witness “to testify on historical and current water production and use at Edwards AFB, including pumping, purchases and conservation and to the authentication of water production and use data.”

Consequently, Gerry will bring to his deposition, in electronic form:

1. All EAFB water production and use records already produced to the parties on the US production site (mainly AF Form 1461, meter logs, reclaimed water reports).
2. Map showing EAFB production by parcel Number.
3. Map showing EAFB homestead wells.
4. Table showing historical water pumping and purchases at EAFB, going back to the 1947.
5. Map showing potable water distribution system (pipes, etc).
6. His resume

In addition, he will have with him for reference:

Spreadsheets he used to develop water pumping, purchasing, recycled water figures shown in the US discovery response and his declaration.

3. “All DOCUMENTS that summarize the DEPONENT's education, training and experience, including all versions of DEPONENT's resume or curriculum vitae.”

Response: Dr. Oberdorfer will produce her current CV, but there is insufficient time to produce “all versions.” Moreover, the request is overbroad, unduly burdensome and oppressive. If producing the current CV is sufficient for purposes of this subpoena, our objection is resolved.

4. “All DOCUMENTS that the DEPONENT intends to use at the time of trial as illustrative or demonstrative evidence.”

Response: Pursuant to the case management order, exhibit lists are to be filed May 14. We reserve the right to submit exhibits at trial documents not currently identified or produced.

5. “All photographs, video tapes, or other recordings which pertain to the DEPONENT's opinion in the Phase 4 trial.”

Response: Dr. Oberdorfer has produced all documents relative to this request and they are posted on our U.S. Document court web-link.

6. "All books, articles, treatises, reports, journals or other DOCUMENTS, which the DEPONENT reviewed, considered or relied upon as the basis for any opinion, conclusion, or analysis of the DEPONENT."

Response: Dr. Oberdorfer will produce the material she relied upon as the basis for her opinion.

7. "All DOCUMENTS that set forth the terms and conditions of the DEPONENT's employment in this matter."

Response: We understand this request to apply to Statements of Work and related documents of non-federal experts employed for the Phase IV trial, and not terms and conditions of the employment of Air Force employees. Therefore, Dr. Oberdorfer's Statement of Work and related documents will be produced, but Mr. Boetsch's employment records will not. If this understanding is correct, our objection is resolved.

8. "All of the DEPONENT's time records and billing statements for work performed relating to the subject matter of this litigation."

Response: Again, we understand this to request to apply to non-federal experts employed for the Phase IV trial, and not Air Force employees. Time records for federal employees will not be produced.

9. "The DEPONENT'S entire file concerning this proceeding."

Response: As written, this expansive request appears to call for irrelevant information, is overbroad, vague and ambiguous, unduly burdensome and oppressive. If this request is intended to refer specifically to Phase IV subject matter, we believe that all documents relied upon for the Phase IV trial have been electronically produced with the exception of the Boetsch documents referenced above.

10. "All electronic files and software reviewed, considered or relied upon by the DEPONENT in reaching any opinion."

Response: As written, this expansive request appears to call for irrelevant information, is overbroad, vague and ambiguous, unduly burdensome and oppressive since it is not limited to opinions relative to Phase IV. Pursuant to the Case Management Order, only documents relevant to Phase IV opinions will be produced. Dr. Oberdorfer relied upon Google Earth, Photoshop, Excel for her expert opinion. The request for all electronic files reviewed for all other testimony calls for irrelevant information, is overbroad, vague and ambiguous, unduly burdensome and oppressive. All documents relied upon for the Phase IV trial have been electronically produced with the exception of the Boetsch documents referenced above.

11. "All DOCUMENTS evidencing any communication with any attorney for the United States regarding the subject matter of this proceeding."

Response: Dr. Oberdorfer's discoverable reports and writings made in the course of preparing her expert's opinion will be produced. See Cal.C.C.P. § 2034.210

12. "All DOCUMENTS evidencing any communication with any evidence for the United States regarding the subject matter of this proceeding."

Response: this request is vague and indecipherable. We will produce all documents pursuant to the California Code referenced above.

13. "All DOCUMENTS evidencing or relating to the production of water by the United States or any department thereof, within the Antelope Valley Area of Adjudication."
14. "All DOCUMENTS, including maps, drawings, plans and the like showing the location of well locations, past and present, for EAFB and Plant 42."
15. "All DOCUMENTS, including maps, drawings, plans and the like showing the water distribution systems, past and present, for EAFB and Plant 42."

Response: All responsive documents have been electronically produced with the exception of the Boetsch documents referenced above.

16. "All DOCUMENTS evidencing water production and use necessary to the War Department's use of land within the A V AA for a bombing and gunnery range under Executive Order 6588."
17. "All DOCUMENTS evidencing water production and use necessary to the War Department's use of land within the A V AA for a bombing and gunnery range under Executive Order 8450."
18. "All DOCUMENTS evidencing water production and use necessary to the Department of Air Force's use of land within the A VAA in connection with an air force base under Public Land Order 613."
19. "All DOCUMENTS evidencing water production and use necessary to the Department of Air Force's use of land within the A V AA in connection with an air force base under Public Land Order 646."
20. "All DOCUMENTS evidencing water production and use necessary to the use of land within the A V AA for military purposes in connection with Edwards Air Force Base under Public Land Order 1126.Order 8450."

Response: All responsive documents have been electronically produced, however, neither Dr. Oberdorfer nor Mr. Boetsch has identified documents responsive to this request.

21. "All DOCUMENTS, including reports, testing, memorandum and the like that mention, discuss or refer to groundwater contamination underlying EAFB."
22. "All DOCUMENTS, including reports, testing, memorandum and the like that mention, discuss or refer to groundwater quality underlying EAFB."

Response: Mr. Boetsch's knowledge of groundwater contamination and quality is limited. The restoration administrative record for EAFB, however, is available to the public online at <http://www.adminrec.com/TOC.asp?Base=Edwards&Command=AFMC> Select "Unlimited records per page". Select "View Edwards AFB index". You will

retrieve a list of 4,100+ documents dated 1982 to Aug 2012 in date order. Select "Image" next to any entry to download PDF of referenced document.

23. "All DOCUMENTS, including reports, testing, memorandum and the like that mention, discuss or refer to or otherwise evidence recommendations received by EAFB to reduce groundwater production at EAFB."
24. "All water management plans for EAFB."

Response: All documents relied upon for the Phase IV trial have been electronically produced with the exception of the Boetsch documents referenced above.

25. "All DOCUMENTS the evidence future water demand at EAFB and Plant 42."
26. "All DOCUMENTS that evidence future plans for expansion of EAFB and Plant 42."

Response: All responsive documents have been electronically produced, however, neither Dr. Oberdorfer nor Mr. Boetsch have identified documents responsive to this request.

Sincerely,

_____/S/_____
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